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## State v. Britain Appellant's Brief Dckt. 44030

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 44030
Plaintiff-Respondent,	)	
	)	ADA COUNTY NO. CR 2015-12424
v.	)	
	)	
DENNIS MATTHEW BRITAIN,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Dennis Britain contends the district court abused its discretion by imposing an excessive sentence in his case. He asserts that a sufficient consideration of the mitigating factors in the record demonstrates that a more lenient sentence would better serve all the goals of sentencing. Accordingly, this Court should reduce Mr. Britain's sentence as it deems appropriate. Alternatively, it should vacate his sentence and remand this case for a new sentencing determination.

## Statement of Facts and Course of Proceedings

Mr. Britain has been struggling with various issues throughout his life. Originally from Ukraine, he was born prematurely with fetal alcohol syndrome. (See Presentence Investigation Report (*hereinafter*, PSI), p.16 (summarizing Mr. Britain's history of diagnoses).) He was initially raised in an orphanage where he suffered not only from physical abuse, but also from rickets, hepatitis A, hepatitis B, chronic bronchitis, protein deficiencies, and osteomyelitis. (PSI, pp.13, 16; Tr., p.31, Ls.11-15.) He also suffered from mental health issues during his childhood, including learning disabilities, language disorders, parent-child relational problems, oppositional defiant disorder, reactive attachment disorder, and personality disorders. (See PSI, p.16.)

When he was five, he was adopted and moved to the United States. (See PSI, p.12.) He was, in some respects, successful, earning his GED in 2006. (PSI, p.14.) However, in other respects, he continued to struggle, being diagnosed with various forms of depression, including bipolar disorder and dysthymic disorder. (See PSI, p.16.) Unsurprisingly, he developed a polysubstance abuse disorder due to alcohol and marijuana use. (See PSI, p.16.) He also had several encounters with the law which culminated with a fight in prison which, apparently due to an unknown medical condition, resulted in the death of the other inmate. (See PSI, p.11 (Mr. Britain stating the other inmate's death was due to a burst aneurysm); see also Tr., p.32, L.13 p.33, L.2 (defense counsel discussing the circumstances surrounding that incident).) However, Mr. Britain was ultimately released from custody, but given his history and conditions, as defense counsel pointed out, it was unsurprising that he continued to struggle with his addictions. (Tr., p.33, Ls.3-6.)

However, it was not just the same addictions he had been trying to deal with previously; Mr. Britain also became addicted to heroin. (See PSI, p.4 (Mr. Britain explaining, “the past year I got addicted to heroin”).) Mr. Britain honestly acknowledged that he had turned to selling heroin in order to support this new addiction. (See, e.g., Tr., p.9, Ls.23-24.) Ultimately, this resulted in him being charged with conspiracy to traffic heroin and actually trafficking heroin. (R., pp.6-8.)

Mr. Britain subsequently entered a plea agreement whereby he would plead guilty to the conspiracy charge and the State would dismiss the remaining counts and not file a persistent violator enhancement (though the State retained the ability to argue the facts of the dismissed charges). (R., pp.67-68.) Additionally, the parties agreed to a minimum fixed sentence of five years, though the State was free to argue for longer. (R., p.68.) Mr. Britain also noted in the guilty plea advisory form that the parties agreed this sentence would be ordered to be concurrent with the sentence which would be imposed in another pending case, CR 15-9613.<sup>1</sup> (R., p.74; see Tr., p.6, Ls.12-18.)

The mental health evaluation conducted in this case, apparently relying only on Mr. Britain’s self-report of no prior history of mental health diagnosis, concluded that, while he had a moderate motivation for treatment, he did not present a mental health issue or need further mental health treatment. (See PSI, pp.89-90.) At the sentencing hearing, defense counsel questioned the accuracy of that report. (Tr., p.32, Ls.8-12.) Defense counsel also recommended the district court impose a unified sentence of fifteen years, with five years fixed. (Tr., p.34, Ls.13-15.) The district court concluded, “Mr. Britain sincerely wants to beat his drug habit, make the best he can out of his life.”

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<sup>1</sup> CR 15-9613 is not on appeal in this case.

(Tr., p.37, Ls.17-19.) However, citing his history of disciplinary issues alongside his actions in this case, the district court imposed a unified sentence of twenty years, with seven years fixed. (Tr., p.38, Ls.1-20.) Mr. Britain filed a notice of appeal timely from the judgment of conviction. (R., pp.82, 90.)

### ISSUE

Whether the district court abused its discretion when it imposed Mr. Britain's sentence.

### ARGUMENT

#### The District Court Abused Its Discretion When It Imposed Mr. Britain's Sentence

Where a defendant contends that the sentencing court imposed an excessively harsh sentence, the appellate court will conduct an independent review of the record, giving consideration to the nature of the offense, the character of the offender, and the protection of the public interest. See *State v. Reinke*, 103 Idaho 771, 772 (Ct. App. 1982). Accordingly, in order to show an abuse of discretion in the district court's sentencing decision, he must show that, in light of the governing criteria, the sentence is excessive considering any view of the facts. *State v. Jackson*, 130 Idaho 293, 294 (1997).

The governing criteria, or sentencing objectives, are: (1) protection of society; (2) deterrence of the individual and the public generally; (3) the possibility of rehabilitation; and (4) punishment or retribution for wrongdoing. *Id.* The protection of society is the primary objective the court should consider. *State v. Charboneau*, 124 Idaho 497, 500 (1993). Therefore, a sentence that protects society and also accomplishes the other objectives will be considered reasonable. *Id.*; *State v. Toohill*,

103 Idaho 565, 568 (Ct. App. 1982). This is because the protection of society is influenced by each of the other objectives, and as a result, each must be addressed in sentencing. *Charboneau*, 124 Idaho at 500; I.C. § 19-2521. However, the Idaho Supreme Court has also held that rehabilitation “should usually be the initial consideration in the imposition of the criminal sanction.” *State v. McCoy*, 94 Idaho 236, 240 (1971), *superseded on other grounds as stated in State v. Theil*, 158 Idaho 103 (2015).

In this case, sufficient consideration of those factors reveals a more lenient sentence, such as the one defense counsel recommended, is appropriate. Most notably, the district court found that “Mr. Britain sincerely wants to beat his drug habit, make the best he can out of the balance of his life.” (Tr., p.37, Ls.17-19.) To that point, defense counsel highlighted various other aspects of Mr. Britain’s character which demonstrate his dedication to tasks before him. (Tr., p.34, Ls.8-12 (“I hate burpees, and I can’t imagine doing 1000 a day, but good for him. I have to say that he is a very determined individual, and if anyone is going to turn his life around, he is the one to do it.”); see PSI, p.15 (Mr. Britain claiming, “I do 1,000 burpees a day”).) This is also demonstrated in the fact that he earned his GED in 2006. (PSI, p.14.)

Mr. Britain also expressed his remorse for his conduct, explaining that he had been selling heroin to support his own addiction, which was a recent development. (PSI, p.4.) It is unclear what relationship this current addiction may have with Mr. Britain’s history of mental health issues, since the 2016 mental health evaluation concluded he had no serious mental illness or need despite a history with at least eleven different mental health issues diagnosed by medical professionals. (*Compare*

PSI, p.16 (summarizing Mr. Britain's previous diagnoses), *with* PSI, pp.89-90 (the 2016 mental health evaluation, apparently accepting Mr. Britain's denial of prior mental health diagnoses).) Nevertheless, the mental health evaluator did note a moderate motivation to get treatment on Mr. Britain's part. (PSI, p.90.)

As such, his willingness and ability to address the issues underlying this case means a less harsh sentence, like the one defense counsel recommended (a unified term of fifteen years, with five years fixed) would best serve all the goals of sentencing, particularly rehabilitation. The district court's decision to impose a harsher sentence, therefore, constitutes an abuse of the court's discretion.

#### CONCLUSION

Mr. Britain respectfully requests that this Court reduce his sentence as it deems appropriate. Alternatively, he requests that his case be remanded to the district court for a new sentencing hearing.

DATED this 11<sup>th</sup> day of August, 2016.

/s/ \_\_\_\_\_  
BRIAN R. DICKSON  
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 11<sup>th</sup> day of August, 2016, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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/s/ \_\_\_\_\_  
MAGALI CEJA  
Administrative Assistant

BRD/mc